IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No 7476 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ARIF BABUBHAI KARVA
Versus
STATE OF GUJARAT

Appearance:
1. Special Civil Application No. 7476 of 2004
MR MM TIRMIZI for Petitioner No. 1
MS PUNANI Ld. AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 08/12/2004

ORAL JUDGEMENT

1. Heard the ld. advocate Ms. Qureshi for Mr. MM Tirmizi for the petitioner and Ms. Punani ld. AGP for the respondent-State. Affidavit-in-reply tendered by ld. AGP Ms. Punani is ordered to be taken on record.

2. The present petition is under Article 226 r/w. Article 21 and 22(5) of the Constitution of India. The

petitioner has challenged legality and validity of order of detention dated 4.6.2004, passed by the Police Commissioner, Rajkot City, under purported exercise of powers vested with the Detaining Authority under Sec. 3(2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (for short 'the Act').

3. The petitioner is branded as "a bootlegger" within the meaning of Sec. 2(b) of the Act. The detaining authority has while passing the order under challenge on 4.6.2004 has considered the fact of registration of 4 different offences punishable under Bombay Prohibition Act. The first offence appears to have been committed on 25.11.2002 and on that very day, the petitioner was arrested. The second offence was registered by Pradhyumannagar Police Station, Rajkot on 31.10.2003 and the petitioner was enlarged on bail by the competent court on 31.10.2003. Thereafter, the third and fourth offence has been registered on 31.5.2004, approximately after 7 months. The detaining authority has considered the fact of involvement of the petitioner in the offences of similar type and the statement recorded by the sponsoring authority placed for consideration with the proposal. The petitioner has challenged the order of detention on various grounds, mentioned in para-4 of the petition. However, she has concentrated her arguments only on the ground that the order is passed without application of mind and looking to the fact that the petitioner on the date of passing of the order, was in judicial custody for both the offences registered on 31.5.2004. On account of registration of these two offences, i.e. offence no. 3 and 4 shown in the table at page 18, i.e. grounds for detention, conveyed to the petitioner, one another co-accused arrested also was detained by the similar order and that too on the very day i.e. on 4.6.2004. This co-detenu has been set at liberty by this Court while dealing with SCA NO. 7059 of 2004. Considering the gap between the offences no. 1 and 2 and also between the offences no. 3, 4 and 5, the present petitioner could have set at liberty on the ground of parity also. The petitioner was undisputedly in judicial custody after his formal arrest on 31.5.2004 and 4.6.2004 respectively in last two offences. The petitioner being co-detenu, this petition is also requires to be allowed for the same reasons that has been assigned by this court while dealing with SCA No. 7059 of 2004 filed by co-accused Jabirali Riyazali Sheikh. The reasons assigned by this court while disposing of the above Special Civil Application No. 7059 of 2004, is adopted and they should be considered

reasons in favour of the present petitioner also. For the sake of convenience, the Registry is directed to keep one copy of the decision of SCA No. 7059/2004 along with this judgment. In view of the above, this petition is required to be allowed.

4. This petition is allowed. Impugned order of detention dated 4.6.2004 passed by the Police Commissioner, Rajkot city, is hereby quashed and set aside and detenu is hereby ordered to be set at liberty forthwith if he is not required to be detained in any other case. Rule is made absolute. DS permitted.

(C.K. BUCH, J.)

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